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A Child's Right to Religious Autonomy: A Response to Hugh LaFollette

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Abstract: This paper evaluates philosopher Hugh LaFollette's arguments against the use of the first amendment as justification for the removal of children from public school curriculum which their Christian parents find offensive. First, this paper will evaluate the use of the first amendment in the case of Mozert v. Hawkins County School Board as well as LaFollette's concerns over the potential for religious indoctrination of the children. It will then expound upon his support of John Stuart Mill's argument for religious freedom while giving practical advice for parents to raise their children in the faith without violating their budding autonomy.

Hugh LaFollette, philosopher and author of "Freedom of Religion and Children,"[1] makes a compelling case for limiting the scope in which parents can utilize religious expression rights to influence the public school education of their children. As more school districts seek to block parents from removing their children from subjects they find morally objectionable,[2] it becomes imperative to clarify the scope in which first amendment rights can be applied. Traditionally, the purpose of the First Amendment is to prevent congress from making laws respecting or prohibiting the free exercise of an established religion, but this paper shall not focus on its role in congress, but on the understanding and application of it by the plaintiffs

[1] Hugh LaFollette, "Freedom of Religion and Children," *Public Affairs Quarterly* 3, no. 1 (January 1989): 75-77.

[2] For more see: Rachel Pell, "Parent's Rights to Withdraw Children from Compulsory Sex Education Classes 'Unlawful,' Says Ministers," Independent.com, March 2, 2017, https://www.independent.co.uk/news/education/education-news/sex-education-classes-compulsory-parents-right-withdraw-children-laura-bates-justine-greening-sre-a7607981.html (accessed December 29, 2017).

(henceforth referred to collectively as Mozert) throughout the Mozert v. Board of Education lawsuit.[3]

To do this I will review the Mozert case at the heart of LaFollette's, "Freedom of Religion and Children," and argue that attempting to block curriculum material that offends a parent's religious convictions is unethical because it infringes upon the free expression rights of one's child[ren]. I will then contend that the first amendment does not permit parents to deny their children access to propositional knowledge, but only protects them from situations where the children are required to espouse or affirm a moral claim contrary to biblical commands of the child's faith. Lastly, I will demonstrate how LaFollette's reference to John Stuart Mill's argument for freedom of religion, what I will refer to as the "Millean Compromise," best prepares children to think critically and reason well outside of the Christian home by addressing objectionable school subjects coupled with apologetic outreach.

The Mozert Case

Beginning in 1983, the Hawkins County Board of Education in eastern Tennessee was engaged in what some reporters referred to as a "mini Scopes trial." Vicki Frost, Bob Mozert, and five other families sued the Hawkins school board for the right to remove their children from the mandated reading program after it was found to be offensive to the parent's Christian beliefs. Mrs. Frost was the first to bring the issue to light when, upon reading through her daughter's 6th grade reader, she noticed that the story presented characters who engaged in mental telepathy.[4] Frost was repulsed at the idea of her child's reading curriculum (referred to as the Holt Reader throughout the court proceedings) containing such un-Christian abilities and spent 200 hours combing the reader for other offenses. In her testimony, she claims that many short stories exhibited themes which "…fell within seventeen (offensive) categories," including evolution, secular humanism, futuristic supernaturalism, and excessive use of imagination.[5]

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[3] Mozert v. Board of Education, 827 F.2d 1058 (1987) http://users.soc.umn.edu/~samaha/cases/mozert_v_hawkins_schools.html (accessed December 29, 2017). It is important to note that this paper is an account of First Amendment jurisprudence to this particular case, which I then use to address corresponding instances throughout. The arguments herein are thus directed only toward potential conflicts with public school curriculums and education.

[4] Ibid., 3-5.

[5] Ibid., 5, 7.

As her research continued, Frost recruited a small group of parents to join her. Bob and Alice Mozert (who eventually led the lawsuit against the district) found that their middle schooler's reader contained much of the same objectionable content, as well as passages that suggested role reversal to evaluate another's position, feminism, and stories that depicted a one-world or planetary society.[6] The families felt that all teaching apart from the "three R's" carried with it imbedded alternative religious and philosophical ideas contrary to those of Christianity. For Mozert, any critical reading curriculum (one that taught virtues in conjunction with phonetics) which did not affirm the truth of their beliefs could not be taught to their children.[7] They eventually sued and secured the right to opt-out of the mandated reading program and substituted the children's education with a homeschool curriculum that agrees with their standards.

LaFollette's Concern

After reviewing the case, LaFollette noticed a marked theme throughout the proceedings, namely, the lack of consideration for the rights of the children in favor of those of the parents, which he believed stems from a misunderstanding of the scope of the parent's right to instruct their children on religious matters. As LaFollette notes, the court's decision is paradoxical. Either the parents have the right to control the religious upbringing of their children, resulting in the children having little in the way of a defendable autonomy, or children have rights worthy of protection (in some cases, from the motivations of their own parents) which the parents cannot control,[8] each bearing with it its own challenges.

Should the parents have total control, then the children are at the mercy of their parent's current convictions, which must be accommodated by the school administration regardless of its soundness. The benefit to the parents is that their child receives an education that is curtailed to their (the parent's) understanding and beliefs. The pitfalls, beyond the burden on the district, is that the child could potentially receive a biased education that ignores large aspects of historical, scientific, and political advancement because they conflict with the parent's interpretation of Scripture.

Conversely, if a child's developing autonomy warrants defense from parental indoctrination, then it is up to the courts to determine which of the parent's actions are overbearing and which are justified. This opens a veritable

[6] Ibid., 6.
[7] Ibid., 14.
[8] Ibid. LaFollette, 77.

can of worms as it would require those of secular or conflicting faiths to make judgments on beliefs they do not embrace or (potentially) have the knowledge to appropriately discern. Parents may worry that this lack of control could be forced their children to make decisions or encounter subject matter that is outside of their developmental maturity. However, as advocated by the Hawkins County School Board and district judges, exposure to such knowledge prepares children for "effective and intelligent participation" in society as informed adults.[9]

Of the two, LaFollette feels the rights of the children warrant more consideration and was frustrated when the courts appeared to ignore them in favor of appeasing the disgruntled parents. To emend this conflict, requires limiting the scope to which parents can direct and influence the religious upbringing and education of their children. This could most easily be accomplished by the courts determining which actions violate the child's beliefs. This entails that they differentiate between the violations of properly basic tenets of the espoused faith with those beliefs which are essentially, but not basically, religious.[10]

This was exactly what the Hawkins School Board challenged the courts to do, because demonstrating that the Holt series violated the central tenets of the parent's beliefs would have warranted the initial lawsuit, which the school board did not feel they could accomplish. Yet the courts declined, stating that it was not their purpose to determine whether the plaintiffs' objections were central to their religion, only that the belief that the curriculum was offensive were *essentially* religious in nature.[11] Because of the court's counter-majoritarian stance, parental influence on a child's religious education[12] must be shown to be limited by the imbedded constraints within one's personal autonomy rights. To do this we need a closer look at the Mozert case.

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[9] Mozert v. Hawkins County Public Schools, 647 F. Supp. 1194 (1986) in Justia US Law, https://law.justia.com/cases/federal/district-courts/FSupp/647/1194/2359788/ (Accessed January 2, 2018), Pg. 3.

[10] By central tenets they mean those that are foundational to the Christian faith, such as the ten commandments. Essentially religious beliefs are those which are influenced by scripture but are grounded in conviction and are not universally applicable. An example of this would be, "I feel compelled by my faith not to watch tv."

[11] Mozert v. Hawkins, 5, 7.

[12] Since essentially religious beliefs are subjective to the convictions of the individual and protected under the Free Exercise Clause of the First Amendment, they cannot be rejected because the majority find them illogical and unreasonable. See, for example, the court case of Thomas v. Review Bd., Ind. Empl. Sec. Div., 450 U.S. 707 (1981).

In Defense of Mozert

As previously summarized, the parents were upset with the adverse philosophical themes reinforced throughout the curriculum, exposure to which could incline their children to, "…adopt the views of a feminist, humanist, pacifist, an anti-Christian, or (God forbid) a vegetarian."[13] LaFollette's fear is that Mozert was seeking judicial approval to indoctrinate their own children to accept a belief by preventing them from encountering any alternative. [14] While I agree with the consequent, I am concerned that he is ignoring the statements of the children in which they reported to have already accepted the Christian faith and agreed with their parents.[15] This would explain why there is little direct engagement between the judges and the children. Since the children had claimed to agree with their parents, then the parents can be spoken to by proxy as both parties are united in motive. LaFollette hints that the children's views could be the disingenuous result of religious brainwashing—yet to suggest this is to deny that the children are capable of exercising the free religious expression that he argues is their right. If children are entitled to determine their own religious inclinations, then we must respect them even if we do not agree with them.

Even if we were to grant, for the sake of example, that a child was afforded total control of their religious education, they (the child) could still contend that they should be removed from the reading program, as their interpretation of the content violates their beliefs. We could not argue that their beliefs are not basic because all that the courts required is that their beliefs be essentially religious. Nor, as mentioned previously, could we suggest that their decision be disregarded because of possible parental influence, because then we deny them the ability to develop their autonomy. We now can see that the problem is not just of possible parental overreach, but also the denial of free access to knowledge on the grounds that it burdens the exercise of religious expression.

Yet is Mozert guilty of both, as LaFollette believes? I contend that they are not, as the children did not protest the parents' intervention and think that Lafollette's conclusion that the courts permitted the subjugation of the children's rights in favor of the parents to be a bit of an exaggeration. True, the children's rights were given little focus, but this was because the children had

[13] Mozert v. Hawkins, 7.

[14] Ibid., 2. To include monetary damages incurred from private school enrollment and court fees.

[15] Ibid., 5.

already testified to agreeing with the parents, not because they were being ignored.[16] Mozert would only have violated the children's autonomy if they had desired to remain in class and the parents still sought to deprive them of that right. This is because the first amendment does not allow a parent to force their children to accept their religion, only that they can freely practice and evangelize their children while they are in their care. This also protects, I believe, against children being forced to accept their parent's convictions which do not have a religiously neutral transcendent application.

The Misunderstanding

The first amendment defends the right to rear one's family in the religion of one's choosing, yet to shepherd a child's religious upbringing while respecting their right to develop their own autonomy requires reason and common sense. Mozert's first error occurred when they[17] misconstrued their religious expression as being burdened when it was offended. To be burdened Mozert would have had to prove that the children were required to participate in actions that stand in direct opposition to their faith. Had the children been forced to participate in magic ceremonies, role-playing the worship of idols, or perhaps making political or religiously derogatory statements, would constitute grounds for a case against the district "as an actual burden on the profession or exercise of religion is required."[18] Yet none of the parents were able to submit evidence demonstrating such activities occurred. Furthermore, the judges reviewed the curriculum and ruled that the content was neutral, neither affirming nor denying any mode of faith or alternative viewpoint mentioned. Teachers and administrators were also interviewed and there were found to be no occurrences of classroom discussion, projects, or activities that asked children to affirm one view over another.[19] Therefore, an instance of religious offence, not burden, occurred. Since religious offenses cannot constitute a violation of free exercise as "virtually no [government] program would be constitutionally possible," Mozert's claims are not legally protected. [20]

This mistaken "burdenhood" similarly affected Mozert's interpretation of the intent of the first amendment. Instead of it preventing public schools

[16] Ibid., 2, 5.

[17] By "Mozert" I am including all parents who pursued the suit against Hawkin's County School Board.

[18] Mozert v. Board of Education, 13.

[19] Ibid., 8, 11.

[20] Ibid.

from adopting a specific religious stance, Mozert understood it as a directive preventing any religiously offensive material from being taught. For example, Frost was offended by a historical account which declared Leonardo da Vinci's artistic genius to be like "the divine touch."[21] Obviously, the author is not saying that da Vinci was divine, but that his paintings were beautiful. However, Frost concluded this to be an example of affirming man as god and classified it an instance of futuristic supernaturalism.[22] Next, stories depicting mischievous children (think Tom Sawyer) or the praising of the efforts of women factory workers during WWII were viewed as advocating disobedience and promoting feminism. This is obviously absurd and highlights why only material in its original state, not our interpretation of that material, can be used to justify the burdening of one's rights, as most anything can be misconstrued as offensive.

Lastly, convictions are not the same as biblical commands. They are the personal work of the Holy Spirit to bring about strength, humility, and the edification of each individual. By nature, they are subjective and have a limited application outside of that person, though not a limited effect. Carl, for example, may be convicted to be more generous with his time after years of selfish pursuits. It would be wrong of him to insist that everyone must volunteer as he now does, because God may be calling others to perfect spiritual flaws in ways that are different or conflict with Carl's conviction. Mark may be called to cut back on volunteering to focus more on his family. This does not mean Mark is less of a Christian or that God gives contradictory convictions, only that convictions lack the authority of biblical commands to mandate a universal application.

With this clarification in mind we can now see how the first amendment limits the scope of parental authority by engaging in a hypothetical example with "Jim" standing in for Bob Mozert's 8th grader.

Jim, like his father, is a Christian, yet he does not share his parent's convictions regarding his education. He is annoyed at their efforts to remove him from English class and feels no spiritual unrest, as they do, when reading *The Diary of Anne Frank*. As the case begins, Jim shares his feelings with the court about the district curriculum and expresses his desire to remain in class and complete the assignments. What are the parents to do? They could claim that Jim is not entitled to this right, deny him the free will they enjoy, and use passages like Ephesians 6:1-3 or Exodus 20:12 to supersede their child's position. Yet doing so seems to lack biblical justification. If, on the other hand, they happen to believe that each child has the right to free expression and

[21] Ibid., 5-6.
[22] Ibid.

spiritual development, then they cannot proceed in forcing him to adhere to their convictions without demonstrating that they have secular footing resulting in non-religious harm.

This means that from the moment Jim objects to his parent's convictions, they are unable to appeal to the first amendment because in doing so they would be violating the clause's purpose by its own use. In order to avoid infringing upon Jim's right to free expression they would have to alter their approach, arguing instead from the position that exposure to the books would cause non-spiritual harm. If, say, Jim were to become clinically depressed after reading such literature, and these incidents had been previously documented and treated by the family psychiatrist, then their argument has non-religious grounds and evidence of harm that out-weigh Jim's free-expression rights and justify his removal from the class.[23] However, if no greater evidence than the parent's disliking the material could be presented, then their case lacks protection and can easily be dismissed.

In cases where the children are too young thoughtfully to engage their right to free expression, then it is up to the parents to discern the moral claims of the material and progress accordingly.[24] A mother initially may feel inclined to invoke her first amendment rights to prevent her kindergartener from hearing that some families are comprised of two daddies or mommies. Upon further consideration, she finds that the curriculum does not praise one as "good" or "equal" but merely states that some families are structured in this manner. The material thus does not violate her rights because it does not ask her child to agree with or approve of a moral issue but states a fact about the world. Even if the conditions were more explicit, as in the case of British Parliament's attempt to force an orthodox Jewish girls school to discuss sexual orientation,[25] parents could not use the first amendment to prevent their child

[23] This is most commonly seen when hospitals or courts intervene in cases where parents or children sought to avoid medical treatment based on religious convictions. While not identical, the hypothetical example is similar in that free expression can by overridden when it is likely to result in harm.

[24] This may seem like I am contradicting my earlier statement in which I highlighted the problems of misinterpreting a curriculum's intent as oppressive when it was offensive. What I am meaning here is that a parent objectively evaluates the moral claims of the material utilizing the previously suggested standards to determine if actual oppression has or will occur.

[25] Richard Price, "Jewish school faces closure for refusing to teach its young girls transgender issues despite its religious ethos being praised four years ago," Daily Mail, July 13, 2017, http://www.dailymail.co.uk/news/article-4694610/School-faces-closure-refusing-transgender-issues.html (accessed January 13, 2018).

from hearing the lecture so long as the class makes no moral claims or forces the child to embrace anything contrary to their beliefs. This is because of "the fact that exposure to something does not constitute teaching, indoctrination, opposition, or promotion of the things exposed."[26] This does not mean that there are no instances in which a parent can seek protection under the first amendment[27] and intervene with the education of the children, only that the grounds for doing so have to respect the child and fall within the legal parameters for it to be applicable. If they do not, parents could still argue that their children are not developmentally mature enough for such material and differ exposure to such a lesson till they are ready.[28]

Naturally, Christian parents may feel vulnerable about such conclusions. In fact, it was this fear of exposure that motivated me to homeschool my children for their first three years of elementary school. My feelings changed, however, when I realized that it was not the introduction of contrary beliefs that posed the greatest threat to my child's faith, but the lack of apologetic arguments offered in response to them. This is perhaps Mozert's greatest mistake. By testifying that they could not allow their children to be exposed to other forms of religion, as well as feelings or attitudes potentially heard in classroom discussion, they denied their children the ability to sharpen their reasoning skills by removing them from situations that were developmentally appropriate for their age.[29] In turn, they prevented their children from sharing the Christian perspective with classmates who might not hear otherwise. Mozert effectively told their children that by accepting Christ they no longer had to think because the Bible already provided them with the answer to situations where critical judgments or choices are exercised.[30] Their efforts were thus an unethical violation of their child's autonomy, not because their children opposed them, but because Mozert sought to permanently block them from being exposed to alternative propositions so that they could not accept beliefs which conflicted with those of their parents.

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[26] Mozert v. Board of Education, 7.

[27] For example, parents whose children are asked to complete the gender unicorn assignment (in which they separate their sexual identity from their physiology) would be justified in invoking their first amendment rights as it requires students to affirm two-story dualism. For more information please see: Nancy Pearcey, *Love Thy Body* (Grand Rapids, MI: Baker Books, 2018).

[28] Some may argue that differing the lesson on the grounds of emotional immaturity is just another way for parents to block material they find offensive. but this is not a concern so long as the children are afforded to opportunity to study the material at a later date, which Mozert did not appear to do.

[29] Mozert v. Board of Education, 11.

[30] Ibid., 14.

The Millean Compromise

After arguing what we cannot and ought not do regarding the influence of our first amendment rights on the education of our children, we have reasonably limited its applicability to only those situations where religious freedom has been burdened. In cases of offense, I advocate that parents can best shepherd their child's religious education without hindering their budding autonomy by first, permitting exposure to different views while, secondly, offering a Christian apologetic response and training in critical thinking in the form of the Millean Compromise.

LaFollette encourages the first portion by arguing that the potential risk to a child's faith from exposing them to alternative philosophies are out-weighed by the potential spiritual and developmental growth such encounters could foster. He presents Mill's argument in which Mill reasons that by allowing children to critically to evaluate conflicting ideas they sharpen valuable reasoning skills that would otherwise remain blunt. Such practices enable children to increase their ability to detect truths and flaws within an argument which, in turn, better helps them understand the foundations and justification of their own beliefs.[31] With these skills they can carefully evaluate opposing arguments and apply the same care to their own doubts when they arise.

We can implement the second portion of the Millean compromise by offering apologetic engagement as our children either encounter subjects and literature that present ambiguous or overtly secular themes, or when they begin to ask question regarding our faith or the practices of the family. Notice that I have not included an age range for such outreach. This is because each child, school, and family dynamic is different. Most children will go through public school without encountering the situations in the examples described above, yet they should still be nurtured with spiritual discussion that prepares them thoughtfully to evaluate their religious inclinations in the future. As such, one's apologetic outreach should be tailored to the level of the child without compromising truth.

This can be accomplished most easily by integrating the same critical reading skills taught in class to moral and ethical situations encountered in daily life. In the case of Mozert, instead of bristling at an author's description of da Vinci's "divine touch," Frost should have asked her children such questions as: what they thought the author meant, how did he come to this conclusion, or

[31] LaFollette, 79. John Stuart Mill's full argument can be read in his book *On Liberty,* however I am utilizing LaFollette's summary on page 79 of his paper since it is his reflection that he interacts with.

what does da Vinci's skill tell us about the creativity of God? When reading about varying social and political systems, Mozert should have taken the opportunity to introduce basic logic skills, encouraging their children to evaluate the validity of their tenets. Acquainting their children with alternative philosophies would have made for an enriching discussion regarding the pros and cons of each, the result being the maturing of the child into an informed and compassionate adult not, as Mozert claimed, an indoctrinated atheist.

As children mature there is a wealth of literature available from logic workbooks, modern beginner-friendly authors like Sean McDowell and J. Warner Wallace, to challenging historical apologists brought back into the spotlight by Tim McGrew. Our goal is to show our children that this information is applicable, accessible, and that it is relevant. If we can accomplish this, then we need not fear their exposure to conflicting doctrine, because they have already been equipped with the abilities to discern truth. Nor should we be consumed with securing their salvation because our challenge as parents is not to convert, but to make them accountable and competent. We do this by witnessing to them, offering an apologetic response to contrary teachings, equipping them with critical reasoning skills, and the opportunities to develop them, all of which are protected and encouraged under the first amendment.

Conclusion

At the forefront of this paper I presented Mozert's case for suing Hawkins School Board for the right to remove their children from the mandated reading program. They contended that the program violated their right to religious free expression by introducing topics that stood in contrast to their religious beliefs. I then summarized LaFollette's evaluation of the court proceedings and, while largely agreeing with him, found his conclusion of parental over-reach to be an exaggeration. By differentiating between having one's religious expression offended and being burdened the scope of parental influence on the education of one's children was justifiably reduced. However, because the courts are unwilling to distinguish between those beliefs which are central (basic) to the faith, and those which are essentially religious, an ethical argument was made denying first amendment protection for limited access to propositional knowledge in cases where justification lacks non-religious footing, especially in cases where children do not share the convictions of their parents. I then offered parameters to evaluate offensive material for religious burdenhood, while siding with LaFollette that exposure offers growth opportunities which avoidance cannot. Lastly, I argued that the Millean

Compromise permits parental religious expression without denying the development of a child's autonomy by blending free access to public education with age-appropriate apologetic outreach. Careful attention was given to emphasizing that while a parent *can* potentially use the free expression clause to block portions of public-school curriculum (made easier by the court's unwillingness to adhere burdenhood to central religious beliefs), the parent *ought* not to do so because offenses are not protected via the first amendment and stunt the child's reasoning and spiritual development. I thus encourage parents to rededicate themselves to raising competent accountable children capable of reasoning well and leave their salvation to the work of the Holy Spirit.

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